

SECTION 8 PROSECUTION AND PROGRESS

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SECTION 8

PROSECUTION AND PROGRESS

8-1.01 Subcontracting. - The Contractor shall give personal attention to the fulfillment of the contract and shall keep the work under the Contractor's control.

No subcontractor will be recognized by City as such and purpose of City, and all persons engaged in the work of construction will be considered by City as employees of the Contractor and the Contractor will be held responsible for their work, which shall be subject to the provisions of the contract and specifications.

The Contractor shall perform with the Contractor's own organization contract work amounting to not less than 50 percent of the original total contract price, except that any designated "Specialty Items" may be performed by subcontract and the amount of any such "Specialty Items" so performed may be deducted from the original total contract price before computing the amount of work required to be performed by the Contractor with the Contractor's own organization. When items of work in the Engineer's Estimate are preceded by the letter (S), said items are designated "Specialty Items." Where an entire item is subcontracted, the value of work subcontracted will be based on the contract item bid price. When a portion of an item is subcontracted, the value of work subcontracted will be based on the estimated percentage of the contract item bid price, determined from information submitted by the Contractor, subject to approval by the Engineer.

Before work is started on a subcontract, the Contractor shall file with the Engineer a written statement showing the work to be subcontracted, the names of the subcontractors and the description of each portion of the work to be so subcontracted.

When a portion of the work which has been subcontracted by the Contractor is not being prosecuted in a manner satisfactory to the City, the subcontractor or any designated employee of the subcontractor shall be removed immediately on the request of the Engineer and shall not again be employed on the work.

The roadside production of materials produced by other than the Contractor's forces shall be considered as subcontracted. Roadside production of materials shall be construed to be production of aggregates of all kinds with portable, semiportable or temporary crushing or screening, proportioning, and mixing plants established or reopened for the purpose of supplying aggregate or material for a particular project or projects. The erection, establishment, or reopening of such plants and the operation thereof in the production of said materials for use on the work shall conform to the requirements relating to labor set forth in these specifications and in the special provisions.

Nothing contained in the specifications or plans shall be construed as creating any contractual relationship between any subcontractor and the City. The divisions or sections of the specifications are not intended to control the Contractor in dividing the work among subcontractors or to limit the work performed by any trade.

The Contractor shall be fully responsible to the City for the acts and omissions of subcontractors, and of persons employed by the Contractor.

The Contractor shall be responsible for the coordination of trades, subcontractors, and suppliers engaged upon this work.

Any and all subcontractors or material suppliers at any tier shall be bound by the provisions of these specifications.

8-1.02 Assignment. - The performance of the contract may not be assigned, except upon the written consent of the City. Consent will not be given to any proposed assignment which would relieve the original Contractor or the original Contractor's surety of their responsibilities under the contract nor will the City consent to any assignment of a part of the work under the contract.

The Contractor may assign moneys due or to become due under the contract and such assignment will be recognized by the City, if given proper notice thereof, to the extent permitted by law, but any assignment of moneys shall be subject to all proper set-offs in favor of the City and to all deductions provided for in the contract and particularly all money withheld, whether assigned or not, shall be subject to being used by the City for the completion of the work in the event that the Contractor should be in default therein.

8-1.03 Beginning of Work. - The Contractor shall begin work within 10 days after receiving the Notice to Proceed from the Engineer, and shall diligently prosecute the same to completion within the time limit provided in the special provisions. The first working day charged shall be the 11th calendar day following the date of the "Notice to Proceed". Should the 11th day fall on a Saturday, Sunday or Holiday, the following working day shall be the first working day charged.

The Contractor shall notify the Engineer, in writing, of the Contractor's intent to begin work at least 72 hours before work is begun. The notice shall be delivered to the Office of the Engineer and shall specify the date the Contractor intends to start. Under no circumstances shall the Contractor enter the site of the work until receipt of the Notice to Proceed.

Should the Contractor begin work in advance of receiving Notice to Proceed, any work performed in advance of the said date of Notice to Proceed shall be considered as having been done by the Contractor's own risk and expense and as a volunteer unless a Notice to Proceed is subsequently issued. Should any work be performed prior to Notice to Proceed, such work shall be subject to inspection and acceptance by City as provided for elsewhere in these Contract documents.

8-1.04 Progress Schedule. - When required by the special provisions, the Contractor shall submit to the Engineer a progress schedule within 20 working days of the Notice to Proceed, or within 10 working days of the Engineer's written request at any other time prior to the Notice to Proceed.

The Contractor must furnish the schedule in the form specified in the special provisions.

The schedule shall show the order in which the Contractor proposes to carry out the work, the dates on which the Contractor will start the several salient features of the work (including procurement of materials, plant, and equipment), and the contemplated dates for completing the said salient features.

The progress schedules submitted shall be consistent in all respects with the time and order of work requirements of the contract.

Subsequent to the time that submittal of a progress schedule is required in accordance with these specifications, no progress payments will be made for any work until a satisfactory schedule has been submitted to the Engineer.

The City retains the right to reject any and all construction schedules submitted by the Contractor, in the City's sole discretion, or when City determines that the Contractor has too many items on the Critical Path or the logic of the schedule is in error.

Subject to the above provisions, nothing herein shall preclude the Contractor from early completion of the contract.

8-1.05 Temporary Suspension of Work. - The Engineer shall have the authority to suspend the work wholly or in part, for such period as the Engineer may deem necessary, due to unsuitable weather, or to such other conditions as are considered unfavorable for the suitable prosecution of the work, or for such time as the Engineer may deem necessary due to the failure on the part of the Contractor to carry out orders given, or to perform any provision of the contract. The Contractor shall immediately comply with the written order of the Engineer to suspend the work wholly or in part. The suspended work shall be resumed when conditions are favorable and methods are corrected, as ordered or approved in writing by the Engineer.

In the event that a suspension of work is ordered as provided above, and should such suspension be ordered by reason of the failure of the Contractor to carry out orders or to perform any provision of the contract; or by reason of weather conditions being unsuitable for performing any item or items of work, which work, in the sole opinion of the Engineer, could have been performed prior to the occurrence of such unsuitable weather conditions had the Contractor diligently prosecuted the work when weather conditions were suitable; the Contractor, at the Contractor's expense, shall do all the work necessary to provide a safe, smooth, and unobstructed passageway through construction for use by public traffic; and provide for proper and efficient operations of sewer, drainage, and other facilities within the site of the work during the period of such suspension as provided in Sections 7-1.08, "Public Convenience," and 7-1.09, "Public Safety," and as specified in the special provisions for the work. In the event that the Contractor fails to perform the work above specified, the City will perform such work and the cost thereof will be deducted from moneys due or to become due the Contractor.

In the event that a suspension of work is ordered by the Engineer due to unsuitable weather conditions, and in the sole opinion of the Engineer, the Contractor has prosecuted the work with energy and diligence prior to the time that operations were suspended, the cost of providing a smooth and unobstructed passageway through the work will be paid for as extra work as provided in Section 4-1.03D or, at the option of the Engineer, such work will be performed by the City at no cost to the Contractor.

If the Engineer orders a suspension of all of the work or a portion of the work which is the current controlling operation or operations, due to unsuitable weather or to such other conditions as are considered unfavorable to the suitable prosecution of the work, the days on which the suspension is in effect shall not be considered working days as defined in Section 8-1.06, "Time of Completion." If a portion of work at the time of such suspension is not a current controlling operation or operations, but subsequently does become the current controlling operation or operations, the determination of working days will be made on the basis of the then current controlling operation or operations.

If a suspension of work is ordered by the Engineer, due to the failure on the part of the Contractor to carry out orders given or to perform any provision of the contract, the days on which the suspension order is in effect shall be considered

working days if such days are working days within the meaning of the definition set forth in Section 8-1.06, "Time of Completion."

In the event of a suspension of work under any of the conditions set forth under this Section, such suspension of work shall not relieve the Contractor of the Contractor's responsibilities as set forth in the specifications including but not limited to the Contractor's maintenance of the Project site in a safe condition.

8-1.06 Time of Completion. - Time is of the essence in the performance of the Contractor's obligations under this contract.

The Contractor shall complete all or any designated portion of the work called for under the contract in all parts and requirements within the time set forth in the special provisions.

Should the Contractor prepare to begin work at the regular starting time of any day on which increment weather, or the conditions resulting from the weather, or the condition of the work, prevents the work from beginning at the usual starting time and the crew is dismissed as a result thereof and the Contractor does not proceed with at least 75 percent of the normal labor and equipment force engaged in the current controlling operation or operations for at least 60 percent of the total daily time being currently spent on the controlling operation or operations, the Contractor will not be charged for a working day whether or not conditions should change thereafter during said day and the major portion of the day could be considered to be suitable for such construction operations.

The current controlling operation or operations is to be construed to include any feature of the work (e.g., an operation or activity, or a settlement or curing period) considered at the time by the Engineer and the Contractor, which, if delayed or prolonged, will delay the time of completion of the contract.

Determination that a day is a non-working day by reason of inclement weather or conditions resulting immediately therefrom, shall be made by the Engineer. The Contractor will be allowed 15 days from the issuance of the weekly statement of working days in which to file a written protest setting forth in what respects the Contractor differs from the Engineer, otherwise the decision of the Engineer shall be deemed to have been accepted by the Contractor as correct. The Engineer will furnish the Contractor a weekly statement showing the number of working days charged to the contract for the preceding week, the number of working days of time extensions being considered or approved, the number of working days originally specified for the completion of the contract and the number of working days remaining to complete the contract and the extended date for completion thereof, except when working days are not being charged in accordance with the provisions in Section 8-1.05, "Temporary Suspension of Work."

8-1.06A Sunday, Holiday and Night Work. - Unless otherwise provided in the Special Provisions, work shall not be done between the hours of 6:00 P.M. and 7:00 A.M. nor on Sundays or legal holidays except such work as is necessary for the proper care and protection of work already performed, or except in case of an emergency, and in any case, only with the prior written permission of the Engineer.

It is understood, however, that night work may be established as a regular procedure by the Contractor if they first obtains the written permission of the Engineer, and that such permission may be revoked at any time by the Engineer if the Contractor fails to maintain at night, adequate force and equipment for reasonable prosecution and to justify inspection of the work.

8-1.07 Liquidated Damages. - It is agreed by the parties to the contract that in case all the work called for under the contract in all parts and requirements is not finished or completed within the number of working days as set forth in the special provisions, damage will be sustained by the City, and that it is and will be impracticable and extremely difficult to ascertain and determine the actual damage which the City will sustain in the event of and by reason of such delay; and it is therefore agreed that the Contractor will pay to the City, the sum set forth in the special provisions per day for each and every calendar day's delay in finishing the work in excess of the number of working days prescribed; and the Contractor agrees to pay said liquidated damages herein provided for, and further agrees that the City may deduct the amount thereof from any moneys due or that may become due the Contractor under the contract.

It is further agreed that in case the work called for under the contract is not finished and completed in all parts and requirements within the number of working days specified, the Engineer shall have the right to increase the number of working days or not, as the Engineer may deem best to serve the interest of the City, and if the Engineer decides to increase the said number of working days, the Engineer shall further have the right to charge to the Contractor, the Contractor's heirs, assigns or sureties and to deduct from the final payment for the work all or any part, as the Engineer may deem proper, of the actual cost of engineering, inspection, superintendence, and other overhead expenses which are directly chargeable to the contract, and which accrue during the period of such extension, except that cost of final surveys and preparation of final estimate shall not be included in such charges.

The Contractor will be granted an extension of time and will not be assessed with liquidated damages or the cost of engineering and inspection for any portion of the delay in completion of the work beyond the time named in the special provisions for the completion of the work caused by acts of God or of the public enemy, fire, floods, tidal waves, earthquakes, epidemics, quarantine restrictions, strikes, labor disputes, shortage of materials and freight embargoes, provided, that the Contractor shall notify the Engineer in writing of the causes of delay within 15 days from the beginning of any such delay. The Engineer shall ascertain the facts and the extent of the delay, and the Engineer's findings thereon shall be final and conclusive.

No extension of time will be granted for a delay caused by a shortage of materials unless the Contractor furnishes to the Engineer documentary proof that the Contractor has made every effort to obtain such materials from all known sources within reasonable reach of the work in a diligent and timely manner, and further proof in the form of supplementary progress schedules, as required in Section 8-1.04, "Progress Schedule," that the inability to obtain such materials when originally planned, did in fact cause a delay in final completion of the entire work which could not be compensated for by revising the sequence of the Contractor's operations. The term "shortage of materials," as used in this section, shall apply only to materials, articles, parts or equipment which are standard items and are to be incorporated in the work. The term "shortage of materials," shall not apply to materials, parts, articles or equipment which are processed, made, constructed, fabricated or manufactured to meet the specific requirements of the contract. Only the physical shortage of material will be considered under these provisions as a cause for extension of time. Delays in obtaining materials due to priority in filling orders will not constitute a shortage of materials.

If the Contractor is delayed in completion of the work by reason of changes made under Section 4-1.03, "Changes," or by failure of the City to acquire or clear right of way, or by moving the Contractor's plant pursuant to Section 6-2.03, "Mandatory Local Material Sources," or by any act of the Engineer or of the City, not contemplated by the contract, an extension of time commensurate with the delay in completion of the work thus caused will be granted and the Contractor shall be relieved from any claim for liquidated damages, or engineering and inspection charges or other penalties for the period covered by such extension of time; provided that the Contractor shall notify the Engineer in writing of the causes of delay within 15 days from the beginning of any such delay. The Engineer shall ascertain the facts and the extent of the delay, and the Engineer's findings thereon shall be final and conclusive.

It is the intention of the above provisions that the Contractor shall not be relieved of liability for liquidated damages or engineering and inspection charges for any period of delay in completion of the work in excess of that expressly provided for in this Section 8-1.07.

8-1.07A No Pay for Delay.- Except as provided in Section 7-1.28 "Archeological and Paleontological Rights", Section 8-1.10 "Utility and Non-Highway Facilities", Section 8-1.09 "Right of Way Delays" and except as provided in Section 7102 of the Public Contract Code, the Contractor shall receive no additional compensation for any delay to the Contractor's work. Such delays are expressly contemplated by the parties hereto. The Contractor's sole remedy for such delay will be an appropriate extension of time to the contract completion of the project.

If the City causes a substantial delay to the project and the Contractor sustains losses which could not have been avoided by the judicious handling of forces, equipment and plant, the City, in its sole discretion, may elect to pay the Contractor an amount the City finds fair and reasonable for the Contractor's actual loss, as in the opinion of the City, was unavoidable. The total amount of any payment made pursuant to this Section, including overhead, profit and administration, shall be as determined in Section 8-1.09 "Right of Way Delays."

8-1.08 (Blank)

8-1.09 Right of Way Delays. - If, through the failure of the City to acquire or clear right of way, the Contractor sustains loss which could not have been avoided by the judicious handling of forces, equipment and plant, there shall be paid to the Contractor such amount as the Engineer may find to be a fair and reasonable compensation for such part of the Contractor's actual loss, as, in the opinion of the Engineer, was unavoidable, determined as follows:

Compensation for idle time of equipment will be determined in the same manner as determinations are made for equipment used in the performance of extra work paid for on a force account basis, as provided in Section 9-1.03A(3), "Equipment Rental," with the following exceptions:

- (1) The right of way delay factor for each classification of equipment shown in the Caltrans publication entitled Labor Surcharge And Equipment Rental Rates, which is a part of the contract, will be applied to such equipment rental rate.

- (2) The time for which such compensation will be paid will be the actual normal working time during which such delay condition exists, but in no case will exceed 8 hours in any one day.
- (3) The days for which compensation will be paid will be the calendar days, excluding Saturdays, Sundays and legal holidays, during the existence of such delay, except that when rental of equipment is paid for under the provisions in Section 9-1.03A (3b), "Equipment not on the Work," no payment will be made for right of way delays in accordance with the provisions in this Section 8-1.09.

Actual loss shall be understood to include no items of expense other than idle time of equipment and necessary payments for idle time of men, cost of extra moving of equipment, and cost of longer hauls. Compensation for idle time of equipment will be determined as provided in this Section 8-1.09 and compensation for idle time of men will be determined as provided in Section 9-1.03A(1), "Labor," and no markup will be added in either case for overhead and profit. The cost of extra moving of equipment and the cost of longer hauls will be paid for as extra work as provided in Section 4-1.03D.

If performance of the Contractor's work is delayed as the result of the failure of the City to acquire or clear right of way, an extension of time determined pursuant to the provisions in Section 8-1.07, "Liquidated Damages," will be granted.

8-1.10 Utility and Non-Highway Facilities. - Attention is directed to Section 7-1.11, "Preservation of Property," and Section 7-1.12, "Responsibility for Damage." The Contractor shall protect from damage utility and other non-highway facilities that are to remain in place, be installed, relocated or otherwise rearranged.

It is anticipated that some or all of the utility and other non-highway facilities, both above ground and below ground, that are required to be rearranged (as used herein, rearrangement includes installation, relocation, alteration, or removal) as a part of the highway improvement will be rearranged in advance of construction operations. Where it is not anticipated that such rearrangement will be performed prior to construction, or where the rearrangement must be coordinated with the Contractor's construction operations, the existing facilities that are to be rearranged will be indicated on the plans or in the special provisions.

Where a rearrangement is indicated on the plans or in the special provisions, the Contractor will have no liability for the costs of performing the work involved in such rearrangement.

The right is reserved to the City and the owners of facilities, or their authorized agents, to enter upon the highway right-of-way for the purpose of making such changes as are necessary for the rearrangement of their facilities or for making necessary connections or repairs to their properties. The Contractor shall cooperate with forces engaged in such work and shall conduct operations in such a manner as to avoid any unnecessary delay or hindrance to the work being performed by such other forces. Wherever necessary, the work of the Contractor shall be coordinated with the rearrangement of utility or other non-highway facilities, and the Contractor shall make arrangements with the owner of such facilities for the coordination of the work.

Attention is directed to the possible existence of underground main or trunk line facilities not indicated on the plans or in the special provisions and to the possibility that underground main or trunk lines may be in a location different from that which is indicated on the plans or in the special provisions. The Contractor shall ascertain the exact location of underground main or trunk lines whose presence is indicated on the plans or in the special provisions, the location of their service laterals or other appurtenances, and of existing service lateral or appurtenances of any other underground facilities which can be inferred from the presence of visible facilities such as buildings, meters and junction boxes prior to doing work that may damage any of such facilities or interfere with their service.

If the Contractor cannot locate an underground facility whose presence is indicated on the plans or in the special provisions, the Contractor shall so notify the Engineer in writing. If the facility for which such notice is given is in a substantially different location from that indicated on the plans or in the special provisions, the additional cost of locating the facility will be paid for as extra work as provided in Section 4-1.03D.

If the Contractor discovers underground main or trunk lines not indicated on the plans or in the special provisions, the Contractor shall immediately give the Engineer and the Utility Company written notification of the existence of such facilities. Such main or trunk lines shall be located and protected from damage as directed by the Engineer and the cost of such work will be paid for as extra work as provided in Section 4-1.03D. The Contractor shall, if directed by the Engineer, repair any damage which may occur to such main or trunk lines. The cost of such repair work, not due to the failure of the Contractor to exercise reasonable care, will be paid for as extra work as provided in Section 4-1.03D. Damage due to the Contractor's failure to exercise reasonable care shall be repaired at the Contractor's cost and expense.

Where it is determined by the Engineer that the rearrangement of an underground facility is essential in order to accommodate the highway improvement and the plans and specifications do not provide that such facility is to be rearranged, the Engineer will provide for the rearrangement of such facility by other forces or such rearrangement shall be performed by the Contractor and will be paid for as extra work as provided in Section 4-1.03D.

When ordered by the Engineer in writing, the Contractor shall rearrange any utility or other non-highway facility necessary to be rearranged as a part of the highway improvement, and such work will be paid for as extra work as provided in Section 4-1.03D.

Should the Contractor desire to have any rearrangement made in any utility facility, or other improvement, for the Contractor's convenience in order to facilitate construction operations, which rearrangement is in addition to, or different from, the rearrangements indicated on the plans or in the special provisions, the Contractor shall make whatever arrangements are necessary with the owners of such utility or other non-highway facility for such rearrangement and bear all expenses in connection therewith.

The Contractor shall immediately notify the Engineer of any delays to operations as a direct result of underground main or trunk line facilities which were not indicated on the plans or in the special provisions or were located in a position substantially different from that indicated on the plans or in the special provisions, or as a direct result of utility or other non-highway facilities not being rearranged as herein provided (other than delays in connection with rearrangements made to facilitate construction operations or delays due to a strike or labor dispute). Any

such delays will be considered right of way delays within the meaning of Section 8-1.09, "Right of Way Delays," and compensation for such delay will be determined in accordance with said Section 8-1.09. The Contractor shall be entitled to no other compensation for any such delay.

Any delays to the Contractor's operations as a direct result of utility or other non-highway facilities not being rearranged as provided in this Section 8-1.10, due to a strike or labor dispute, will entitle the Contractor to an extension of time as provided in Section 8-1.07, "Liquidated Damages." The Contractor shall be entitled to no other compensation for any such delay.

Notwithstanding any other provisions of the contract, plans, specifications or Special Provisions, the City shall, as between the City and Contractor, assume the responsibility and the cost therefor for the location, repair of damage not due to the Contractor's failure to exercise reasonable care, removal, or relocation of existing main and trunkline utility facilities located on the site of the work, if such facilities are not identified in the plans or specifications made a part of the Notice to Contractors inviting bids for the work, and for equipment on the project necessarily idled during such location, repair, removal or relocation. If the Contractor, while performing the contract, discovers utility facilities not identified by the City in the plans or specifications, the Contractor shall immediately notify the Engineer and the utility in writing. The public utility, where it is the owner of an affected utility, shall have the sole discretion to perform repairs, removal or relocation work or permit the Contractor to do such repairs, removal or relocation work on the affected utility at a reasonable price.

The Contractor shall not be assessed liquidated damages for delay in completion of the project when such delay was caused by the failure of the City to provide for removal or relocation of such utility facilities.

Nothing herein shall be deemed to require the City to indicate the presence of existing service laterals or appurtenances whenever the presence of such utilities on the site of the construction project can be inferred from the presence of other visible facilities, such as buildings, meter and junction boxes, on or adjacent to the site of the construction. However, nothing herein shall relieve the City from identifying main or trunklines in the plans and specifications.

Nothing herein shall preclude the City from pursuing any appropriate remedy against the utility for delays which are the responsibility of the utility.

Nothing herein shall be construed to relieve the utility from any obligation as required either by law or by contract to pay the cost of removal or relocation of existing utility facilities.

8-1.11 Termination of Contract. - The contract may be terminated by the Engineer when termination is authorized by Section 7-1.125, "Legal Actions Against the City," Section 7-1.165, "Damage by Storm, Flood, Tidal Wave or Earthquake," or by other provisions of the contract which authorize termination. The City also reserves the right to terminate the contract at any time upon a determination by the Engineer in the Engineer's sole discretion that termination of the contract is in the best interest of the City. If the City elects to terminate the contract for convenience, the termination of the contract and the total compensation payable to the Contractor shall be governed by the following:

- (A) The City will issue the Contractor a written notice signed by the Engineer, specifying that the contract is terminated. Upon receipt of said written notice, the

Contractor will be relieved of further responsibility for damage to the work (excluding materials) as specified in Section 7-1.16, "Contractor's Responsibility for the Work and Materials," and, except as otherwise directed in writing by the Engineer, the Contractor shall:

- (1) Stop all work under the contract except that specifically directed to be completed prior to acceptance.
- (2) Perform work the Engineer deems necessary to secure the project for termination.
- (3) Remove equipment and plant from the site of the work.
- (4) Take such action as is necessary to protect materials from damage.
- (5) Notify all subcontractors and suppliers that the contract is being terminated and that their contracts or orders are not to be further performed unless otherwise authorized in writing by the Engineer.
- (6) Provide the Engineer with an inventory list of all materials previously produced, purchased or ordered from suppliers for use in the work and not yet used in the work, including its storage location, and such other information as the Engineer may request.
- (7) Dispose of materials not yet used in the work as directed by the Engineer. It shall be the Contractor's responsibility to provide the City with good title to all materials purchased by the City hereunder, including materials for which partial payment has been made as provided in Section 9-1.06, "Partial Payments," and with bills of sale or other documents of title for such materials.
- (8) Subject to the prior written approval of the Engineer, settle all outstanding liabilities and all claims arising out of subcontracts or orders for materials terminated hereunder. To the extent directed by the Engineer, the Contractor shall assign to the City all the right, title and interest of the Contractor under subcontracts or orders for materials terminated hereunder.
- (9) Furnish the Engineer with the documentation required to be furnished by the Contractor under the provisions of the contract including, on projects as to which Federal and State funds are involved, all documentation required under the Federal and State requirements included in the contract.

- (10) Take such other actions as the Engineer may direct.
- (B) Acceptance of the contract as hereinafter specified shall not relieve the Contractor of responsibility for damage to materials. The Contractor shall continue to be responsible for damage to materials after issuance of the Notice of Termination, except as follows:
 - (1) The Contractor's responsibility for damage to materials for which partial payment has been made as provided in Section 9-1.06, "Partial Payments," and for materials furnished by the City for use in the work and unused shall terminate when the Engineer certifies that such materials have been stored in the manner and at the locations the Engineer has directed.
 - (2) The Contractor's responsibility for damage to materials purchased by the City subsequent to the issuance of the notice that the contract is to be terminated shall terminate when title and delivery of such materials has been taken by the City.
 - (3) When the Engineer determines that the Contractor has completed the work under the contract directed to be completed prior to termination and such other work as may have been ordered to secure the project for termination, the Contractor will recommend that the Engineer formally accept the contract to the extent performed, and immediately upon and after such acceptance by the Engineer, the Contractor will not be required to perform any further work thereon and shall be relieved of the Contractor's contractual responsibilities for injury to persons or property which occurs after the formal acceptance of the project by the Engineer.
- (C) Termination of the contract shall not relieve the surety of its obligation for any just claims arising out of the work performed.
- (D) The total compensation to be paid to the Contractor shall be determined by the Engineer on the basis of the following:
 - (1) The reasonable cost to the Contractor, without profit, for all work performed under the contract, including mobilization, demobilization and work done to secure the project for

- termination. In determining the reasonable cost, deductions will be made for the cost of materials to be retained by the Contractor, amounts realized by the sale of materials, and for other appropriate credits against the cost of the work. Deductions will also be made, when the contract is terminated under the authority of Section 7-1.165, "Damage by Storm, Flood, Tidal Wave or Earthquake," for the cost of materials damaged by the "occurrence." When, in the opinion of the Engineer, the cost of a contract item of work is excessively high due to costs incurred to remedy or replace defective or rejected work, the reasonable cost to be allowed will be the estimated reasonable cost of performing such work in compliance with the requirements of the plans and specifications and the excessive actual cost shall be disallowed.
- (2) A reasonable allowance for profit on the cost of the work performed as determined under Subsection (1), provided the Contractor establishes to the satisfaction of the Engineer that it is reasonably probable that the Contractor would have made a profit had the contract been completed and provided further, that the profit allowed shall in no event exceed 4 percent of said cost.
 - (3) The reasonable cost to the Contractor of handling material returned to the vendor, delivered to the City or otherwise disposed of as directed by the Engineer.
 - (4) A reasonable allowance for the Contractor's administrative costs in determining the amount payable due to termination of the contract.
 - (5) A reasonable credit to the City for defective or incomplete work not corrected.

All records of the Contractor and subcontractors necessary to determine compensation in accordance with the provisions of this Section 8-1.11 shall be open to inspection or audit by representatives of the City at all times after issuance of the Notice of Termination and for a period of 3 years, thereafter, and such records shall be retained for that period.

After acceptance of the work by the Engineer, the Engineer may make payments on the basis of interim estimates pending issuance of the Final Estimate in accordance with Section 9-1.07B, "Final Payment and Claims," when, in the Engineer's opinion, the amount thus paid, together with all amounts previously paid or allowed, will not result in total compensation in excess of that to which the Contractor will be entitled. All payments, including payment upon the Final Estimate shall be subject to deduction for prior payments and amounts, if any, to be kept or retained under the provisions of the contract.

If this contract is terminated by the City for cause, and it is later determined that the proper basis for a termination for cause did not exist, the termination shall be deemed to have been a termination for convenience and governed by the terms of this contract dealing with such termination.

If the contract is terminated by the City for cause or convenience, such termination shall neither act as a waiver by the City of its right to require the Contractor to correct defects in the work performed by the Contractor nor void any warranties applicable to the work performed under the contract.

The provisions of this Section 8-1.11 shall be included in all subcontracts.

In the event of conflict between the termination provisions of this Section 8-1.11 and any other provision of the contract, this Section 8-1.11 shall prevail.

8-1.11A Continuation of Contract. - If a dispute should arise between the Contractor and the City regarding work performed or to be performed or payment therefor, Contractor hereby agrees that it will continue to perform the work called for under this contract and hereby expressly waives its rights, if any, to terminate or suspend work pending resolution of said dispute.

8-1.12 Concurrent Delays. - Where there are concurrent delays to a controlling item of work no extension of time or additional compensation shall be granted to the Contractor where at least one of the delays is due, in part or in whole, to the Contractor's own acts.

8-1.13 City's Right to Carry Out the Work. - If the Contractor defaults or neglects to carry out the work in accordance with the contract documents, and fails within seven days after receipt of written notice from the City to commence and continue correction of such default or neglect with diligence and promptness, the City may, after 7 days following receipt by the Contractor of an additional written notice and without prejudice to any other remedy the City may have, make good such deficiencies. In such case an appropriate Change Order shall be issued deducting from the payments then or thereafter due the Contractor the cost of correcting such deficiencies, including compensation for the Engineer's additional services made necessary by such default, neglect or failure. Such action by the City and the amount charged to the Contractor are both subject to the prior approval of the Engineer. If the payments then or thereafter due the Contractor are not sufficient to cover such amount, the Contractor shall pay the difference to the City.

END OF SECTION